

**Human Rights Department
Administration of Executive Order No. 22**

Performance Audit

December 2001




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MEMORANDUM

DATE: March 6, 2002

TO: Mayor Kwame M. Kilpatrick
Honorable City Council

FROM: Joseph L. Harris 
Auditor General

RE: Performance Audit of Human Rights Department
Administration of Executive Order No. 22

Attached for your review is our report on the performance audit of the Human Rights Department (HRD) Administration of Executive Order No. 22.

This report contains an executive summary; a glossary of acronyms and terms; our audit objectives, scope, and methodology; background; our findings and recommendations; and an attachment containing the Human Rights Department's responses to the findings and recommendations.

A copy of this report has been provided to the Human Rights Department.

The Department's cooperation and professionalism were outstanding during the audit. The staff, that we interviewed, worked with, and observed, were very cooperative and demonstrated a high degree of professionalism and dedication to their mission. We appreciate the cooperation and assistance received from the employees of the Human Rights Department.

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EXECUTIVE SUMMARY

Human Rights Department Administration of Executive Order No. 22

Introduction

This report contains the result of our performance audit of the Human Rights Department (HRD) administration of Executive Order No. 22.

Audit Purpose

The Office of the Auditor General (OAG) conducted a performance audit of the Human Rights Department's (HRD) Contract Compliance Division to determine whether it was properly administering Executive Order No. 22 for all publicly funded construction projects in the City of Detroit and privately funded construction projects that have developmental agreements with the City.

This audit was requested by the City Council to determine the performance of the HRD in administering Executive Order No. 22 and to make recommendations for improvements. The City Council made the request during the City Council Public Hearing held on March 21, 2001, regarding the "Unfair Treatment of Women Contractors in Relation to Distribution of Projects in the City of Detroit".

Overall Conclusion

In our opinion, the HRD is administering Executive Order No. 22 in a satisfactory manner, considering the limitations of the executive order and the Department's authority.

The HRD has adopted a policy of working with contractors to gain compliance with Executive Order No. 22 requirements as opposed to immediately initiating punitive measures against non-compliant contractors such as contract termination. The HRD has also initiated outreach efforts to work with contractors, unions, and construction industry organizations to commit them to provide more construction trade employment opportunities to Detroit residents, minorities, and women.

Most contractors are not meeting all the numerical requirements of Executive Order No. 22. Based on data provided to us by the HRD for projects taking place during the period January 1, 1999 to October 17, 2001, a total of 79% of the City funded projects were meeting the minority requirement, but only 42% were meeting the women requirement and 40% the Detroit resident requirement. Most of these contractors were providing the HRD with documentation to show that they were making "good faith efforts" to comply.

Executive Order No. 22 numerical requirements may be unreasonable and unattainable because the actual number of Detroit residents, minorities, and women employed in each construction skilled trade in the Detroit area (Southeastern Michigan) may be insufficient. Some unions are not providing opportunities for minorities and women. Also, a large number of construction projects creating full employment for construction skilled trades workers in the Detroit area has adversely impacted the ability of contractors to meet the Executive Order No. 22 requirements.

The HRD was not monitoring or not fully monitoring all City construction contracts for Executive Order No. 22 compliance because City Department's did not always obtain the

HRD Executive Order No. 22 clearance for their construction contracts and some City Departments obtained the clearance long after the project started.

The HRD staff cooperation and professionalism were outstanding during the audit. In addition, the outreach efforts by the HRD were excellent.

Listed below is a brief description of our findings and recommendations.

Summary of Findings

1. The HRD has not formally issued a Directive on the new Executive Order No. 22 administrative guidelines to all City Departments to replace Finance Directive 101.
2. Most construction contracts or projects requiring compliance with Executive Order No. 22 are not meeting all the numerical requirements especially those for Detroit residents and women.
3. The HRD does not monitor all of the City funded construction contracts for Executive Order No. 22 compliance mainly due to the failure of the City Departments to notify the HRD and obtain the required clearance in a timely manner.
4. The HRD has some weaknesses in the monitoring of contractors for compliance with Executive Order No. 22 requirements such as not documenting audits of all projects quarterly and poor follow-up on some contracts.
5. The HRD lacks a bona fide audit process for Executive Order No. 22.
6. The HRD needs to improve its internal and external reporting process to provide its management with relevant information to assess performance and improve the administration of Executive Order No. 22.
7. Noteworthy accomplishments of the HRD included its staff's professionalism; outreach efforts to improve employment opportunities in construction trades for Detroit residents, minorities, and women; and implementing streamlined procedures for Executive Order No. 22 that have made the administration process much more efficient.

Summary of Recommendations

We recommend the HRD take action to:

- Work with the Finance Department to issue a new Directive to all City Departments, Boards and Commissions, for Executive Order No. 22 administrative guidelines and replace Finance Directive 101.
- Continue to vigorously work with contractors to gain compliance with the provisions of Executive Order No. 22; and continue outreach efforts to commit contractors and unions to hire more Detroit residents, minorities, and women.
- Work with the Finance Department to have HRD approval authority in the DRMS system for all construction contracts responsible for meeting Executive Order No. 22 requirements to ensure that all construction contracts are processed through the HRD.
- Improve monitoring for all projects by more timely follow-up on non-compliant contractors.

- Add a bona fide audit component to the Executive Order No. 22 oversight process and segregate monitoring and compliance auditing responsibilities.
- Implement a formal reporting/management information system to utilize the Executive Order No. 22 data collected by the HRD into meaningful reports.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

Audit Objective

A. Overall:

- Determine whether the HRD is properly administering Executive Order Number 22 for all publicly funded construction projects in the City of Detroit and privately funded construction projects, which have developmental agreements with the City.

B. Specific:

- Determine whether the HRD has implemented management controls over the administration of Executive Order No. 22.
- Determine whether established criteria, standard operating procedures, or other procedures exist and are documented for administering Executive Order No. 22.
- Determine whether the HRD management maintains an information and reporting system to ensure that Executive Order No. 22 is properly administered.
- Determine whether the HRD has knowledge of and documents all (population) of the projects that Executive Order No. 22 applies to.
- Determine whether the HRD is properly monitoring and/or conducting audits to ensure compliance with Executive Order Number 22 for all publicly funded construction projects in the City of Detroit and privately funded projects, which have developmental agreements with the City.
- Determine what action the HRD is taking to promote affirmative action in all City construction contracts and public works projects.

Audit Scope

The Office of the Auditor General conducted a performance audit of the Human Rights Department's administration of Executive Order Number 22 for all publicly funded construction projects in the City of Detroit and privately funded construction projects which have developmental agreements with the City. Our review included such tests of monitoring files and records, staffing records, observation of site visits by the HRD staff, and other procedures, as we considered necessary to satisfy our objectives. We reviewed records applicable for the period July 1, 1999 to the present.

Our audit was conducted in accordance with the Governmental Auditing Standards issued by the Comptroller General of the United States except for the completion of an external quality control review of the Office of the Auditor General within the last three years, and accordingly, included such tests of the records and such other auditing procedures as we considered necessary in the circumstances.

Some information was omitted from this report because it was deemed privileged or confidential.

Audit Methodology

We reviewed all available documentation including the HRD Budget, organization chart, website, goals based governance, City Charter concerning the HRD, Executive Orders

Numbers 4, 14 and 22, previous audit report, standard operating procedures for inspections, consultant report, and other information. We also interviewed the HRD management. We evaluated the HRD administration of Executive Order Number 22 by reviewing evidential material gathered through interviews, observation and inspection of the actual monitoring and inspection process, and tests for compliance with the required monitoring and inspection process and management controls. We reviewed the HRD Executive Order No. 22 procedures, guidelines, reports and monitoring files. We observed two HRD audits at the project site. We reviewed the HRD staffing and training records. We reviewed the HRD outreach efforts to encourage the employment of more Detroit residents, minorities and women in the construction trades.

GLOSSARY

Glossary of Acronyms and Terms

Affirmative Action	Taking specific steps to eliminate discrimination and its effects to ensure nondiscriminatory results and practices in the future and to involve Detroit residents, minority, and women workers fully in employment on construction contracts in the City of Detroit.
CCD	Contract Compliance Division of the Human Rights Department
Clearance	The total project has met the minimum requirements of Executive Order No. 22 based on accuracy, authenticity, and the timely submission of all documentation.
Compliance Audit	To determine compliance with applicable laws and regulations such as Executive Order No. 22.
Conditional Clearance	The total project has not met the minimum requirements of Executive Order No. 22, however the General contractor or its agents have provided acceptable good faith efforts to the HRD.
DBB	Detroit Based Business
DSBP	Detroit-Based and Small Business Program (EO 4)
Enforcement	To compel observance of Executive Order No. 22.
EO 4	Executive Order No. 4 establishes the Detroit-Based and Small Business Program (DSBP). EO 4 targets thirty percent (30%) of the total dollar value of all contracts awarded by the City of Detroit for Detroit-Based and Small business Enterprises.
EO 14	Executive Order No. 14 establishes HRD identification and certifications of Minority Business Enterprises (MBE) and Women Owned Business Enterprises (WBE). Requirements include at least fifty-one percent (51%) bona fide ownership of the business enterprise by minorities or women, and control by minorities or women of the direction, policy and overall operations of the business.
EO 22	Executive Order No. 22 requires that worker hours on publicly funded construction projects be comprised of not less than 50% Detroit Residents; 25% Minorities and 5% Women.
General Contractor	The prime contractor responsible for the contract.

Good Faith Efforts	<p>Efforts engaged in by contractors, which could be reasonably expected to produce a level of Detroit resident, minority and women participation to meet the Executive Order No. 22 requirements. Good faith efforts are met when they:</p> <ul style="list-style-type: none"> • Contact local unions and request Detroit residents, minorities and women for construction work • Utilize apprentices • Post help wanted signs • Distribute job announcements to community organizations • Utilize minority news media to advertise job announcements • Establish training or apprenticeship programs • Develop plans for compliance with Executive Order No. 22
HRD	Human Rights Department
Interim Conditional Clearance	The general contractor has submitted a signed bid or contract document agreeing to comply with the requirements of Executive Order No. 22.
MBE	Minority Business Enterprise
Minority	As defined by the U.S.A. Small Business Administration, African Americans, Hispanic Americans, Asian Americans, and Native Americans.
Non-Compliance	The total project is not in compliance with all of the Executive Order No. 22 requirements and the general contractor or its agents have not cooperated by making "good faith efforts" to comply.
Performance Audit	A performance audit is an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decision making by parties with responsibility to oversee or initiate corrective action.
Project	Construction activity that could include one or more construction contract. For example, the Eastern Market improvement project included many phases and contracts.

Set-aside	A technique which limits consideration of bids or proposals to those submitted by MBEs and WBEs; portion of work selected solely for MBE and/or WBE competition when the determination is made by the recipient that the use of a set-aside is needed to achieve its MBE/WBE goals.
SBE	Small Business Enterprise
Skilled Trades	Construction trades such as carpentry, masonry, plumbing, electrical, sheet metal, heating, etc.
Strict Scrutiny	When a governmental action is race-conscious or based on the race, ethnicity, or nationality of another, the test applied to determine the constitutional validity of the action is the strict scrutiny test. The test requires the courts to determine whether the government has a compelling interest and that the action taken is narrowly tailored to meet that interest.
Subcontractor	A business providing equipment, goods, materials, services, or supplies to a general/prime contractor.
WBE	Women Business Enterprise

BACKGROUND

Mission and Goals

The Mission of the Human Rights Department (HRD) is to remove discriminatory barriers through innovative, high-quality customer-driven programs that foster economic opportunity and empowerment and benefit Detroit residents, visitors, and the entrepreneurial sector of the local economy.

The HRD's ultimate objective is to advance the economic development of the citizens of the City of Detroit. The Human Rights Department facilitates the creation of employment and training opportunities for Detroit residents. The HRD is well known to many citizens for investigating complaints and discrimination.

The HRD is responsible for the monitoring of vendor workforces for companies seeking City contract awards or tax abatement relief to ensure equitable representation of minorities and women consistent with local, state, and federal equal employment opportunity policies. This includes review of City of Detroit departmental labor forces for equal employment opportunity compliance. The Department also administers and enforces Executive Order No. 4 (EO 4 Detroit-Based and Small Business Program), Executive Order No. 14 (EO 14 Certification of Minority and Women Owned Business Enterprises), and Executive Order No. 22 (EO 22 Employment of Local Labor on Publicly Funded Projects). The HRD refers and/or accepts for investigation complaints alleging discrimination.

Goals of the Department

1. Ensure equitable representation of minorities and women in the labor forces of the City's vendors, departments and agencies.
2. Maximize Detroit residents, minorities and women in construction trades.
3. Improve Detroit-based, small, minority, and women business participation in City contracts.
4. Investigate or refer human rights complaints.

The Contract Compliance Division (CCD) is responsible for enforcement of Executive Orders and for affirmative action monitoring. Executive Order No. 4, Executive Order No. 14, and Executive Order No. 22 are administered and enforced by the CCD.

Goals and Objectives of the CCD

1. Maximize Detroit residents, minorities and women participation on City of Detroit publicly funded construction projects by proactively monitoring hiring practices [Executive Order No. 22].
2. Create a business environment that fosters economic development and provides growth opportunities for Detroit based, small, minority, and women business enterprises.

Difference EO 4 Vs EO 22

The HRD is not an agent of set-asides for race and gender based programs. The Arrow Office Supply v City of Detroit court decision struck down, as unconstitutional (violates the 14th Amendment), the City's sheltered market program for minorities and women businesses. This program was replaced by Executive Order No. 4, which establishes a goal for the City to award 30% of the total dollar value of all contracts let by the City to Detroit Based Businesses and Small Businesses. The EO 4 program is different from

the Executive Order No. 22 program in that EO 4 applies to all City funded contracts and to all businesses/vendors, and is a goal; whereas Executive Order No. 22 applies just to vendors and their subcontractors bidding on construction contracts and to individuals (Detroit residents, minorities, and women) working in the construction trades and is a requirement.

HRD Responsibilities and Staffing

An Organizational Assessment Project Final Report on the Human Rights Department, dated February 2000, provided by D. J. Miller & Associates (DJMA), Inc. found " The Human Rights Department has been given several responsibilities in recent years that extend beyond the original duties assigned to the Department which were not contemplated at the time the current organizational structure was established. Until recently, the HRD's primary responsibilities were investigating discrimination complaints, enforcing the City's Human Rights Ordinance, monitoring the City's affirmative action employment goals, and ensuring that the work force of each City vendor and tax abatement candidate fairly reflects characteristics of the relevant labor pool.

'The HRD later acquired the Contract Compliance unit [in fiscal year 1992-93] and with it the responsibility for certifying DBE (Detroit Business Enterprise)/SBE (Small Business Enterprise) firms [Executive Order 4] and performing clearances for vendors subject to the EO 22 program. Previously, these functions were housed in the Contract Compliance Division of the Finance Department. The Division was subsequently moved in its entirety to the HRD. However, there was no corresponding adjustment made to the Department's structure to accommodate its new functions and demands. More recently, the Department has been charged with the responsibility for monitoring public-private partnerships with private sector organizations [Development Agreements with Casinos, Stadiums, and Compuware]. The HRD is responsible for monitoring the entity's compliance with the terms of the agreement. The agreements generally consist of voluntary commitments to comply with the EO 22 program and DBE/SBE contracting goals. However, the HRD did not acquire an increase in staff or a reorganization of its structure to accommodate its new responsibility.

'The HRD will begin to certify minority and women owned businesses [EO 14], in addition to current DBE/SBE certifications.

'The HRD's current staffing levels, inventory of staff skills, and structure are not capable of handling the mounting demands that have been assigned to the Department. From the best practices research, DJMA found that the staffing levels of the agencies surveyed range from 3 to 34. The staff levels at the agencies varied depending on (1) the number of programs and tasks each agency was responsible for implementing, (2) the size of the programs that each agency implemented, and (3) the agencies' level of commitment to the various program initiatives.

'Of the agencies surveyed, there were no agencies that had the responsibility of executing as many programs as the HRD. The City of Houston (with a staff of 34 - the largest department of the agencies surveyed) performed fewer functions than the City of Detroit's Human Rights Department. Moreover, DJMA did not find any agencies that had a program similar to the City's Tax Abatement Clearance program that was handled by a department similar to the City's Human Rights Department. Given the best practices data, and the current and projected demands on the Department, DJMA recommends increasing the allotted positions in the Department from 27 to 37. DJMA

recommends the addition of one Administrative Assistant Grade 1. This position would be primarily responsible for supporting the Contract Compliance Division and ensuring that the Department processes its forms and technical paperwork in an efficient and timely manner."

The City has added three positions to the HRD in the last two fiscal years. However, in this current fiscal year the HRD has been given additional responsibilities for implementing and monitoring Executive Order No. 14 (Women Business Enterprise and Minority Business Enterprise certifications). Our audit findings note that the HRD still lacks sufficient staffing, especially for conducting audits for Executive Order No. 22 compliance.

Listed below is a history of the HRD staffing over the twenty-seven fiscal years.

Fiscal Year	HRD Total Staff
1975-1976	25
1980-1981	22
1985-1986	19
1990-1991	15
1991-1992	11
1992-1993	14
1994-1995	14
1995-1996	19
1999-2000	27
2000-2001	29
2001-2002	30

Note that in the early and mid 1990s the HRD incurred a significant reduction in personnel when the City was experiencing financial difficulties.

Executive Order No. 22

Effective May 1, 1984, Executive Order No. 22, "Employment of Local Labor on Publicly Funded Construction Projects" became applicable to construction projects and demolition projects, which are directly related to construction projects. Executive Order No. 22 was issued when unemployment was high in the City. Mayor Young stated "There is a particularly high rate of unemployment and underemployment for Detroit residents who work in the construction industry and subcontracted trades.

'Publicly funded construction projects in the City are substantially supported by money derived from Federal, State and City taxes. It is important that we assure that those funds, which are returned to Detroit, are used to provide the maximum benefit for Detroit.

'More specifically, construction projects in Detroit or for the City's benefit should, so far as is possible, provide jobs for the residents of this City. Detroit residents have a right to expect an opportunity to hold jobs generated by publicly funded construction projects involving the City.

'Therefore, I do hereby order that the following policy take effect as of November 1, 1983:

On any construction project funded in whole or in part by the City, or State or Federal funds, the worker hours shall be performed by not less than 50% bona fide Detroit residents, not less than 25% minorities and at least 5% women. Where possible, these percentages shall be applied on a craft-by-craft basis. For purposes of this paragraph, worker hours shall include work performed by persons filling apprenticeship and on-the-job training positions."

The Contract compliance Division (CCD) has four personnel assigned to monitoring Executive Order No. 22. These are a Junior Governmental Analyst, an Intermediate Governmental Analyst, a Senior Governmental Analyst and a Principal Governmental Analyst who supervises the others and administers projects as needed. The HRD also has a Manager of the Contract Compliance Division who is responsible for the HRD's Executive Order No. 22, Executive Order No. 14, and Executive Order No. 4 administration.

Affirmative Action Legal Issues

Affirmative action case law strongly disfavors government programs such as Executive Order No. 22 that require race and gender preferences. There has been much litigation (i.e., *City of Richmond v. J. A. Croson Co* (1989), *Arrow Office Supply Co v. City of Detroit* (1993), *Adarand Contractors, Inc. v Pena*, etc.) that has adversely impacted affirmative action programs that require preferences based on race. The City of Detroit no longer has a sheltered market procurement program for minority and women-owned businesses because the *Arrow Office Supply v. City of Detroit* court decision struck this program down.

The report "Affirmative Action and the Courts" published by the Public Law Research Institute, dated February 1996, stated "For some time, affirmative action has been debated in the political arena. Recent United States Supreme Court decisions, however, have prompted some commentators to suggest that the future of affirmative action will be determined by the courts, not the legislatures. That future, according to one view is bleak. The Supreme Court has now made it clear that any government program, federal, state or local, that creates a racial preference is unconstitutional, unless the particular preference "serves a compelling governmental interest, and is narrowly tailored to further that interest." Because this test, known as "strict scrutiny" is notoriously difficult to meet, it is possible that the courts will take a leading role in cutting back on the scope of existing affirmative action plans." In addition, the report stated "Whether a program is called a quota, a set-aside, a goal, or a target, if an individual can show that he or she was denied a benefit because of his or her race, the government's action may be subject to strict scrutiny. Because strict scrutiny is a very difficult standard to meet, *Adarand* and *Croson* create a strong incentive for state and local governments to move away from programs that set specific numerical requirements for minority participation and toward programs that rely on other methods of fostering equal opportunity, such as recruitment and training [This is the new emphasis by the HRD for Executive Order No. 22]. A wide variety of programs are being developed, as state and local governments struggle to come to grips with the court's mandates. Some of these programs are motivated by a desire to diversify the workplace or to remedy discrimination, but do not create racial preferences." Also, the report stated: "Racial preferences are subject to strict scrutiny because the equal protection clause of the fourteenth amendment to the United States Constitution was aimed specifically at

eliminating racial discrimination. By contrast, government actions that discriminate on the basis of gender or handicap are subject to a lesser standard of strict scrutiny."

HRD Enforcement of Executive Order No. 22

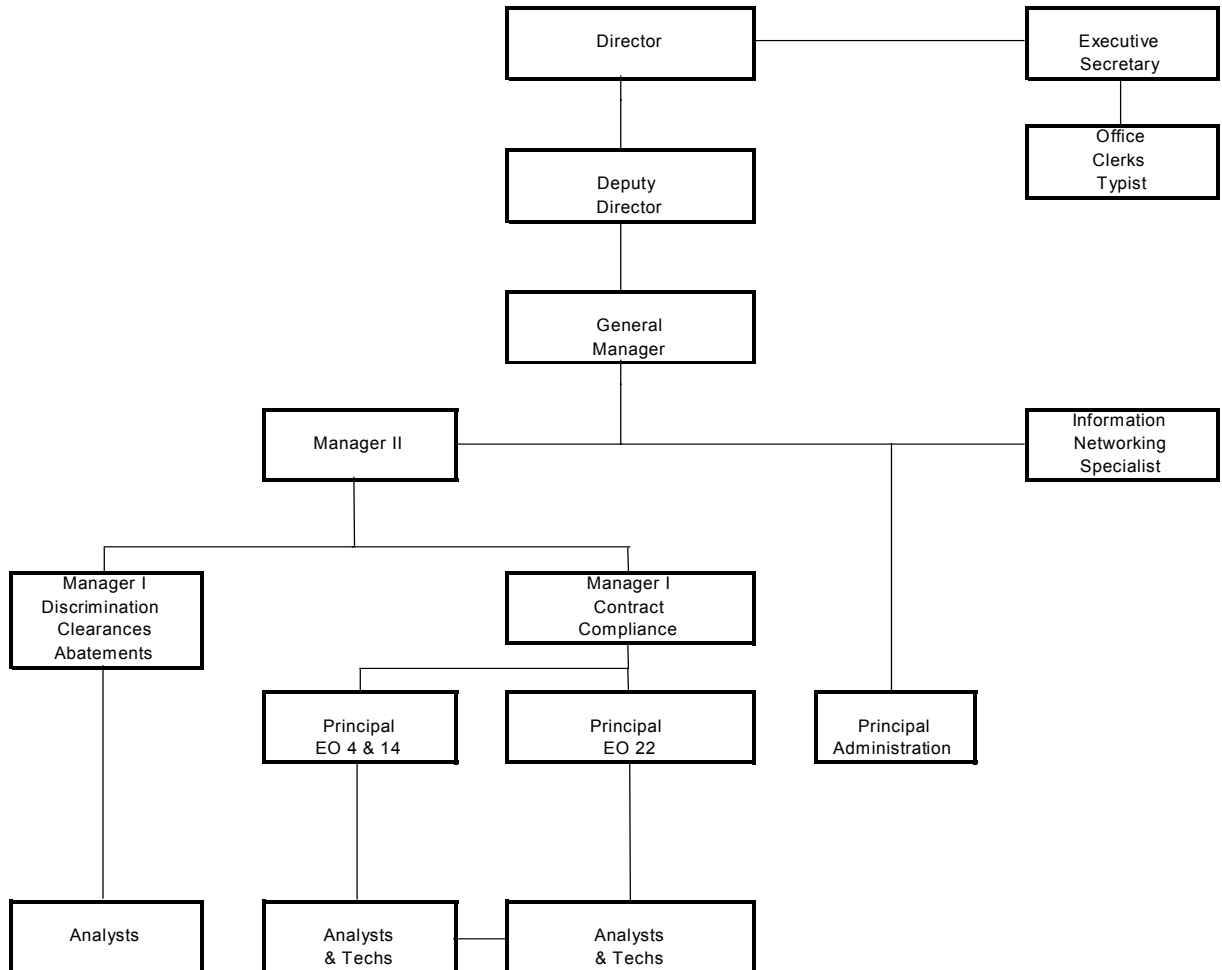
The HRD is working with contractors to gain compliance with Executive Order No. 22 by seeking cooperation through outreach and "good faith efforts", as opposed to immediately initiating punitive measures against non-compliant contractors such as contract termination or debarment. Contractors who are not meeting all the Executive Order No. 22 numerical requirements, but are submitting the required reports and documenting "good faith efforts" to comply will be granted conditional clearances. For non-compliant contractors who fail to document "good faith efforts", the HRD will issue them a non-compliant letter. If the non-compliant contractor is unresponsive to the letter, the policy of the HRD is to contact the applicable City Department and request that contract payments be withheld and/or refer the contractor to the Law Department for legal action.

Difference Vendor Clearance Vs EO 22 Clearance

The Executive Order No. 22 clearance process is a separate function of the HRD from the vendor clearance process. Clearances are required of all City vendors and not just for construction projects. The purpose of regular vendor clearances is to monitor all vendors bidding on City contracts to ensure equitable representation of minorities and women in the labor forces of the City's vendors. Executive Order No. 22 requires a separate clearance to ensure that construction contractors meet Executive Order No. 22 requirements.

Organization Chart

Presented below is the organization chart of the HRD, which we obtained from the Department.



Findings and Recommendations

1. HRD Lacks Formal Directive on EO 22 Administrative Guidelines

The HRD has revised the administrative guidelines for Executive Order No. 22, but has not formally replaced the old guidelines (Finance Directive 101). In addition, the new guidelines lack or are not clear on several requirements that should be included such as requiring City Departments to obtain the HRD clearances (Interim Conditional Clearance) for Executive Order No. 22 prior to awarding of the construction contract. As a result, City Departments and the HRD are not always properly administering Executive Order No. 22. City Departments are following the old guidelines for Executive Order No. 22 contract language. Some City Departments are not always obtaining the HRD Executive Order No. 22 clearance prior to awarding the construction contract. As a result, the HRD is not informed of all the construction contracts or is informed of the contract after the work has started, hampering its efforts to monitor the contract.

In July 1999 the HRD adopted new administrative guidelines for Executive Order No. 22. The HRD Executive Order No. 22 procedures and clearance process were streamlined to make the process more efficient and to encourage greater compliance with the Executive Order No. 22 requirements. The old administrative guidelines were contained in Finance Directive 101 (Executive Order No. 22 Clearance Procedures and User Department, Contract Compliance Unit [HRD's Contract Compliance Division] and Purchasing Division Procedures) issued in March 1985. A HRD representative told us that Finance Directive 101 should have been terminated when the new HRD administrative guidelines took effect in 1999. However, the HRD never formally took action to replace Finance Directive 101 with the new guidelines. As a result, Finance Directive 101 is technically still valid and City Departments are still following Finance Directive 101 for Executive Order No. 22 contract language.

In addition, the new HRD guidelines were not clear on or lacked several relevant and important requirements for City Departments to follow that the old guidelines had. In our opinion these requirements should be included in the new guidelines to provide City Departments with clear direction on administering Executive Order No. 22. These requirements include:

- 2.0 "Contract and Advertisement Language. Contracts to which Executive Order No. 22 is applicable are required to include the language in Attachment I."
- 2.0, Attachment I, contract language stating "Per Executive Order No. 22 worker hours on any construction project funded in whole or in part by city, state, or federal funds shall be performed by not less than 50% bona fide Detroit residents, not less than 25% minorities and at least 5% women. Where possible, these percentages shall be applied on a craft-by craft basis. For purposes of Executive Order No. 22, worker hours shall include work performed by persons filling apprenticeships and on-the-job training positions".
- 2.0, Attachment I, contract language stating "Failure to comply with the provisions of Executive Order No. 22 shall constitute a material breach of the contract, and the City may exercise those rights provided to it under the contract and by law. Sanctions may include, but are not limited to,

termination of all or part of the contract, withholding of payment, and/or liquidated damages. Additionally, performance by the contractor in regard to Executive Order No. 22 may be considered in determining the contractor's awardability for future City contracts."

- 2.0, Attachment I, contract language stating "Any person who knowingly submits false information, makes misrepresentations, or commits fraud or any other willful violation under Executive Order No. 22 shall be subject to maximum civil liabilities and criminal penalties allowable under law."
- 2.0 "The responsibility for inserting the language into the bid document and the advertisement is as follows:

Purchasing Division

For contracts awarded by Purchase Order

The User Department

For Book Type Construction, Demolition, and Personal/Professional Service Contracts That Include Construction"

- 3.1 "Requests for Executive Order Clearance by the User Department. All bids will be referred to the User Department for evaluation. After evaluating the bids, the User Department will prepare a "Request for Executive Order No. 22 Clearance" form to be submitted to Contract Compliance Unit [HRD's Contract Compliance Division] (see Attachment III). The form will include the date, the department representative that requests the clearance, the project name, the intended contractor's name, and a Purchasing Division File No. or Contract No."
- 3.3 "Evaluation of Contractor Information. The Contract Compliance Unit [HRD's Contract Compliance Division] will evaluate the information and determine if a clearance will be granted. The evaluation period shall not exceed two weeks."
- 3.3 "If a clearance is not granted, the bid of the contractor is not responsive and is ineligible for award. Written notification will be sent by Contract Compliance to the contractor, user department, and Purchasing Division. The user department may at that time elect to do one of the following:
 1. Request E.O. #22 clearance on the next acceptable bidder.
 2. Cancel file and rebid requirements."
- 3.3 "The user department shall inform Purchasing in writing regarding its decision."
- 3.4 "Notification of Clearance. The user department shall return bids to Purchasing after evaluation with the Department's recommendation for award."
- 3.4 "Clearances shall be submitted to Purchasing and the user department by Contract Compliance. The contract will not be awarded until clearance has been received."
- 3.5 "Notification of Non-Compliance. Notification of non-compliance will be submitted to Purchasing by Contract Compliance. Purchasing will, in turn, notify the user department. The following options exist:

1. Clearance may be requested on the next acceptable bidder by following the procedures outlined in paragraphs 3.1 and 3.2.
 2. All bids may be rejected and the contract requirements rebid."
- 4.0 "Personal/Professional Services Contracts That Include Construction. The user department is responsible for ensuring that Executive Order No. 22 documentation for compliance and clearance is received prior to submitting the contract to Purchasing."

This report includes in finding three discrepancies that the new guidelines fail to clearly provide adequate controls/procedures for. These discrepancies are:

- City Departments are not always obtaining the HRD Executive Order No. 22 Interim Conditional Clearances prior to awarding the construction contract. Also, some City Departments are not submitting the request for clearance and obtaining the Interim Conditional Clearance at all. As a result, the HRD is not monitoring some contracts for Executive Order No. 22 compliance and some contractors are not submitting the required reports to the HRD in a timely manner.
- The HRD is not in the DRMS contract approval hierarchy for Executive Order No. 22 clearances (and vendor clearances).

The new guidelines also imply that the Interim Conditional Clearance will be granted after the award of the contract. The new guidelines state for the Interim Conditional Clearance "The general contractor has submitted a signed bid or contract document agreeing to comply with the goals of Executive Order No. 22."

A representative of the Finance Department advised us that the HRD Director should issue a Directive to all City Departments, Boards and Commissions, which contain the new administrative guidelines for Executive Order No. 22. In addition, the HRD Director should work with the Finance Department to draft the new Directive and formally replace Finance Directive 101. The new Directive should state that it replaces Finance Directive 101.

Recommendation

We recommend that the HRD work with the Finance Department to formally replace Finance Directive 101 with a new Directive to all City Departments, Boards and Commissions, for Executive Order No. 22, that includes the new administrative guidelines and the relevant requirements of the old guidelines that were omitted.

2. Few Contracts/Projects Are Fully Complying With EO 22 Numerical Requirements

Most construction contracts or projects requiring compliance with Executive Order 22 are not meeting all the numerical requirements. As a result, Detroit residents, minorities, and women are not receiving their intended share of the construction work on the City funded construction projects and the major privately funded projects that have agreed to provide the opportunities required by Executive Order No. 22. We did observe that most of those projects not meeting the numerical requirements were providing the HRD with documentation of their "good faith efforts" to comply.

Executive Order 22 requires "On any construction project funded in whole or in part by the City, or State, or Federal funds, the worker hours shall be performed by not less than 50% bona fide Detroit residents, not less than 25% minorities and at least 5% women. Where possible, these percentages shall be applied on a craft-by-craft basis. For purposes of this paragraph, worker hours shall include work performed by persons filling apprenticeship and on-the-job training positions."

The HRD provided us with compliance data for one hundred twenty-one City funded construction projects that the HRD monitored during the period January 1, 1999 to October 19, 2001. At October 19, 2001, these construction projects were in various stages of completion with some in progress and others completed. Based on this data, are the following Executive Order Number 22 compliance results for the one hundred and twenty one construction projects, as of October 19, 2001:

<u>Description</u>	<u>Number</u>	<u>Percentage</u>
Compliance with 50% Detroit Resident hours numerical requirement	48	40%
Compliance with 25% Minority hours numerical requirement	95	79%
Compliance with 5% Women hours numerical requirement	51	42%
Full compliance with all EO 22 numerical requirements	30	25%
*No full compliance with any EO 22 numerical requirement	21	17%

*Projects noted as no full compliance with any EO 22 numerical requirement may have had some participation and good faith efforts to comply, but did not meet the numerical requirement.

We noted several errors and omissions in the compliance data provided by the HRD. However, we believe the data fairly represents the Executive Order No. 22 compliance results for projects monitored by the HRD.

We noted the following compliance results provided by the HRD for seven major privately funded projects, as of August 2001, that were required to comply with Executive Order Number 22 per a development agreement with the City:

<u>Description</u>	<u>Number</u>	<u>Percentage</u>
Compliance with 50% Detroit Resident hours numerical requirement	0	0%
Compliance with 25% Minority hours numerical requirement	7	100%
Compliance with 5% Women hours numerical requirement	2	29%
Full compliance with all EO 22 numerical requirements	0	0%
*No full compliance with any EO 22 numerical requirement	0	0%

*Projects noted as no full compliance with any EO 22 numerical requirement may have had some participation and good faith efforts to comply, but did not meet the numerical requirement.

<u>Projects</u>	<u>Total Hours to Date</u>	<u>Detroit Resident Hours</u>	<u>Minority Hours</u>	<u>Women Hours</u>
Comerica Park	1,191,875	31%	38%	4%
Ford Field Stadium	291,912	25%	28%	4%
Ford Field Warehouse	251,810	30%	31%	3%
Compuware	55,252	31%	40%	2%
Motor City Casino	454,465	31%	27%	2%
Greektown Casino	345,707	31%	30%	5%
MGM Grand Casino	649,569	32%	36%	6%

Most contractors are not meeting the Detroit resident and women numerical requirements of Executive Order No. 22. Executive Order No. 22 numerical requirements may be unreasonable and unattainable because the actual number of Detroit residents, minorities, and women employed in each construction skilled trade in the Detroit area (Southeastern Michigan) may be insufficient. We were told that some contractors were bringing in qualified minority skilled trades workers from outside the City to meet the 25% minority requirement. Some unions are not providing opportunities for minorities and women. Also, a large number of construction projects creating full employment for construction skilled trades workers in the Detroit area has adversely impacted the ability of contractors to meet the Executive Order No. 22 numerical requirements.

We visited two construction sites and saw very few construction workers who were minorities and/or women. One general contractor Executive Order No. 22 representative told us that unions continue to discriminate against minority and women workers in apprenticeship programs. In addition, the representative told us that subcontractors on the project used the "good faith efforts", such as sending a letter to a union requesting the targeted labor, as a loophole to evade Executive Order No. 22 numerical requirements. The other general contractor Executive Order No. 22 representative told us that the superintendents and foremen working on the project preferred to hire construction workers that they had employed previously and were reluctant to hire Detroit residents, minorities, and women that they did not know, because they feared that these workers could cause delays and missed deadlines. This representative also told us that required drug testing was another issue that resulted in fewer targeted workers applying for construction work.

A representative of the HRD said that the pool of qualified Detroit residents, minorities and women in construction skilled trades is insufficient due to past discrimination and many would say continuing discrimination. The HRD is working as a facilitator with construction unions and businesses to develop Detroit residents, minorities and women to become qualified for employment in the construction skilled trades. We were advised by a representative from the City's Law Department that a lack of qualified Detroit residents, minorities and women in the construction skilled trades raises an implausibility defense for contractors who fail to comply with Executive Order No. 22. They can cite a lack of qualified Detroit residents, minorities, and women in their industry as a defense for not meeting the Executive Order No. 22 requirements. The HRD noted in an October 10, 2001 document that a challenge to the Human Rights Department was a lack of diversity in the skilled trades workforce of Detroit, Metro Detroit and Southeast Michigan.

One Union stated in response to a contractor's request for qualified Detroit resident, minority and women skilled trades workers (letter dated March 19, 2001) "Please be advised that due to full employment, we are unable to fill your request at this time, however, we will make every effort to provide you with journeymen who qualify under Executive order 22 as they become available". The IBEW (International Brotherhood of Electrical Workers) and some other unions will not supply workers based on race. The IBEW union stated "IBEW Local 58 refers persons for hiring by employers with which the Local has collective bargaining agreements. The purpose of this letter is to certify the following:

1. Local 58's agreement with its employers require referral of applicants on a non-discriminatory basis, without regard to race, color, creed, sex, religion, national origin or membership in the Local.
2. Local 58 refers applicants on a non-discriminatory basis."

The Skilled Trades Roundtable held November 10, 1999 at IBEW Local 58, highlighted current efforts to recruit more minority and women construction workers from Detroit neighborhoods. An article on the roundtable discussion noted "Superficially the solution to the problem appears simple. Current statistics indicate that while many suburban areas are scrambling to find workers unemployment in Detroit is still running at a recessionary level of 7.2%. Unfortunately, as the roundtable pointed out, poverty within the City generates difficulties that often bench job applicants. A City of Detroit representative said city residents are in great need of support systems. Many require educational help to qualify for job openings. In addition, until they've earned enough

money to become independent, they'll also need help covering vital job related expenses, especially transportation. We need more African American contractors, more women contractors; more minority contractors."

Insights Plus Consulting prepared the "Notable Findings from the Environmental Scan and Career Development System Report Card" dated June 2001 for the Detroit Workforce Development Board and the Detroit Education Advisory Group. These findings note the higher unemployment in the City of Detroit than for the region and point to the correlation between high unemployment and the lack of education and skills. The findings included the following:

- While the City's employment trends are positive, a greater portion of the City's workforce is seeking work than that in the region.
- The connection between formal education and preparation for work is weaker in Detroit than in the Region.
- Education attainment levels are less than those for the State and the Region.
- In the skills-intensive economy of the 21st Century, one phenomenon is unavoidable: knowing means growing. Indeed the correlation between education attainment, employment and income is becoming stronger and stronger. It has been difficult in the past and it will be virtually impossible in the future for individuals with low levels of education and workplace skills to vigorously participate in an ever-changing economy.
- The improvement of education levels and workplace skills will become an increasing critical force for propelling the City's economy into a growth pattern equal to or better than neighboring economies. Organized learning at all levels and for all populations holds the promise of moving families out of poverty, increasing per capita income, enhancing the local economy, and improving the over-all quality of life for City residents."

An HRD representative told us that it was noted that some Detroit residents move from the City when they obtain employment, as a result of Executive Order No. 22, making it harder for contractors to comply with the 50% Detroit resident requirement. He said this happened on the Casino and Stadium projects where he estimates that 5-7% of those initially reported as Detroit residents moved out of the City during the project.

Recommendation

As noted in the background section, we recommend that the HRD continue to vigorously work with contractors to gain compliance with the provisions of Executive Order No. 22; and continue outreach efforts to commit contractors and unions to hiring more Detroit residents, minorities and women.

3. HRD Not Monitoring All City Construction Contracts

The HRD does not monitor or fully monitor all of the City funded construction contracts for Executive Order No. 22 compliance. City Departments do not always request Executive Order No. 22 clearances or notify the HRD about the construction contract. Also, City Departments and contractors may fail to notify the HRD about the start of a new phase of a project. In addition, City Departments sometimes notify the HRD about a project long after it has started. As a result, not all City construction contracts are monitored or fully monitored for compliance with Executive Order No. 22. When contracts are not monitored by the HRD there is less likelihood that they will meet the Executive Order No. 22 requirements. In addition, when the HRD is informed about a project after work has started it places a greater burden on the HRD monitoring staff to bring contractors into compliance.

Finance Directive 101, paragraph 3.1, requires that "the User Department will prepare a "Request for Executive Order No. 22 Clearance" form to be submitted to Contract Compliance unit [Contract Compliance Division HRD]". Paragraph 3.4 of the Directive states, in part, "Clearances will be submitted to Purchasing and the user department by Contract Compliance. The contract will not be awarded until clearance has been received. Paragraph 3.3 of the Directive states, in part, "If a clearance is not granted, the bid of the contractor is not responsive and is ineligible for award." Note that the Executive Order No. 22 clearance differs from the standard vendor clearance that the HRD issues for all contractors bidding on City contracts.

The DRMS construction contract approval hierarchy does not include Executive Order 22 clearances. In addition, the HRD relies on the City Departments to keep them informed of the construction projects that they contract for. As a result, there is no assurance that a contractor has received an Executive Order No. 22 clearance prior to the contract award. Also, there is the chance that the construction contract will never be reported to the HRD and monitored for compliance with Executive Order No. 22.

We reviewed thirty-nine City construction contracts, pulled from the City's DRMS system to determine whether the HRD was monitoring them. Of the thirty-nine, we could not find evidence that the HRD was monitoring six of them. A HRD representative acknowledged that some Construction contracts were not reported to the HRD.

We reviewed the monitoring of twenty-four City funded construction contracts/projects including some from the sample of thirty-nine noted above and found that the HRD was not notified by the City Department to monitor three of them (PC 698-In System Storage, DBA 87-Eastern Market improvements, and DBA 108-Detroit Public Library improvements) until after most of the work was completed. Two projects (Public Library improvements and Eastern Market improvements) were done in phases and the HRD was not notified of the start-up of a new phase. In addition, we could not find any documentation to evidence that the City Department requested an Executive Order No. 22 clearance from the HRD for another two (Zoo 6538-Arctic Ring of Life and DWS 828-Design/Build Emergency Generators) of the twenty-four projects that we reviewed and the HRD did not start monitoring these projects until long after the projects started.

The HRD does not always receive the Request for Executive Order No. 22 clearance prior to the contract award. We reviewed twenty-one projects that City Departments requested clearances for and found that for thirteen projects the request for Executive

Order No. 22 clearance was not submitted to the HRD until after the City awarded the contract.

We noted that twenty-one of twenty-four projects reviewed did not submit their reports timely, especially at the start of the project. The HRD had to send them the Executive Order No. 22 guidelines and work with them to bring them up to date on their report submittals. The HRD was notified in October 2001 that construction work started on PC 744 (DWSD) in May 2001. The HRD was working with the prime contractor to obtain the reports that should have been submitted in June 2001. This further indicates the need for the HRD to have more involvement in the contract process before a contract is awarded.

An Organizational Assessment Project Final Report on the Human Rights Department, dated February 2000, provided by D. J. Miller & Associates, Inc recommended that the HRD Contract Compliance Division "become more involved in the procurement processes of the City. A representative from the division should work with the procuring departments of the City to encourage them to utilize DBB/SB/MWBEs on City projects. Initially this should be the division manager, and as staff becomes more familiar with City procurement processes, other division staff may be selected to perform this task. The division manager or designee should work with other department managers to

- Coordinate networking functions in which the certified contractors, City buyers and other City officials can meet and form business relationships;
- Participate as a voting member (or at least as an advisor) on procurement selection committees;
- Develop a process to review bid packages valued in excess \$100,000; and
- Work with procurement offices to remove unnecessary barriers that might limit a DBB/SB/MWBE's ability to bid successfully on a contract."

An HRD representative said that he would like to see more up-front involvement by the HRD Contract Compliance Division with the City's Purchasing Division to provide input and guidance before a contract is awarded. This would enable the HRD to better monitor construction contracts for Executive Order No. 22 compliance. In addition, the City would be more responsive to affirmative action in its contracting process.

Recommendation

We recommend that the HRD be given Executive Order No. 22 approval authority in the City's DRMS system for construction contracts. No construction contract should be awarded by the City without the HRD approval (Interim Conditional Clearance for Executive Order No. 22 issued by the HRD). We noted that the HRD was timely in issuing the Interim Conditional Clearances.

In addition, we recommend that the HRD's Contract Compliance Division work more closely with the contracting City Departments and the Finance Department's Purchasing division to ensure that affirmative action is accomplished in the award of city contracts, especially construction contracts.

4. Weaknesses in HRD Monitoring of EO 22 Requirements

The HRD does a good job of monitoring most projects. However, we did see evidence of inadequate monitoring on some projects. In addition, the HRD did not document many site visits and audits for the City funded construction projects/contracts that we reviewed. Ineffective or lack of monitoring could result in projects not meeting Executive Order No. 22 requirements. As a result, Detroit residents, minorities, and women may not be fairly provided opportunities for work on construction projects in the City of Detroit.

The HRD monitoring process includes:

- Maintaining a file for every project and documenting all monitoring activities for that project in the file.
- Providing technical assistance to contractors throughout the project for compliance with Executive Order No. 22 requirements.
- Staff review of the required monthly reports (Subcontractor Report, Skilled Trade Report, Payroll Summary Report for the General contractor and subcontractors, and good faith effort documentation) verifying accuracy and consistency of the data.
- Ensuring required reports are submitted.
- Verifying and compiling total construction hours, Detroit resident hours, minority hours and women hours for each project.
- Analyzing compliance with Executive Order No. 22 requirements.
- Issuing Clearance letters - (1) Clearance for full compliance; (2) Conditional Clearance for partial compliance and good faith efforts; and (3) Non-compliance for not meeting Executive Order No. 22 requirements nor making good faith efforts.
- Conducting site visits to consult with contractors.
- Conducting audits at least once every quarter of all long-term projects to verify payroll and Detroit residency data submitted.

The HRD was properly monitoring most projects for Executive Order No. 22 compliance. We noted good efforts by the HRD staff to consult with General/Prime contractors on problems they were having. The HRD also did a good job in encouraging contractors to make efforts to work with unions to employ more Detroit residents, minorities and women. Most of the general/prime contractors were responsive to the HRD staff inquiries and requests.

The HRD documented six (twenty-six percent) site visits and five (twenty-two percent) audits for the twenty-three (does not include one new project) construction project files that we reviewed. Most of the audits appeared to be conducted off-site at the HRD's office utilizing documents (i.e., certified payrolls and proofs of Detroit residency) provided by the contractor.

According to an HRD representative, the HRD lacks enough staff to properly monitor and audit all the construction projects in a timely manner. Major development projects

like the casinos and stadiums are audited more often and require more staff time to audit.

A total of six out of the twenty-one (does not include the three projects not monitored until after most of the work was completed) projects that we reviewed did not submit all the required reports.

It appeared that the HRD was not always prompt in following up on non-compliant contractors. Several (six of twenty-four) files had four to nine month gaps between the entries in the activity log even though contractors were non-compliant and the HRD was waiting on requested information.

Recommendation

We recommend that the HRD follow-up more timely on non-compliant contractors. It appeared that the HRD phone calls and follow-up produced results.

5. Lack of Bona Fide EO 22 Audit Process

The HRD's Executive Order No. 22 oversight process lacks a bona fide audit component. The HRD staff does conduct audits, but they are limited in scope and lack the verification procedures of a bona fide audit. As a result, the HRD audits are not sufficient to provide the City with assurance that general contractors are accurately reporting Executive Order No. 22 compliance data to the HRD. Contractors could falsify data and the HRD audit process would be unable to detect it. The HRD is basically relying on the contractor integrity to accurately report Executive Order No. 22 data.

The HRD audit is actually a limited-scope review of required Executive Order No. 22 data reported by the construction contractor. The HRD audit relies on data, including subcontractor data, supplied by the general/prime contractor that is not validated or verified by the auditor. It is useful in detecting errors and inconsistencies in reporting.

In our opinion, the HRD audit is necessary, as part of a good monitoring program. However, it does not provide the assurance of a bona fide audit, which would provide credibility to the reported construction contractor data through objectively acquiring and evaluating more reliable and corroborating evidence. For example, a bona fide audit would include procedures to trace employees reported on the subcontractor payroll summary form to payroll registers and to the underlying time cards and personnel records to ensure the hours match and are supported, whereas the HRD audit traces the employees reported on the subcontractor payroll summary form to a certified payroll register only, which does not verify the accuracy of the payroll data reported.

At the City Council public hearing, held on March 21, 2001, a concern was raised that contractors could falsify hours reported for Detroit residents, minorities and women in order to meet the Executive Order No. 22 requirements. The New Stadia Development Monitoring Task Force reported in its meeting minutes allegations of workers being falsely reported as Detroit residents. The current HRD audit process would unlikely detect any false reporting. In our opinion, a bona fide audit could properly detect false reporting.

Obtaining subcontractor cooperation for an Executive Order No. 22 audit could be difficult. We observed that subcontractors might only work a few days on a project and would unlikely be on the project site during the HRD audit. Also, many subcontractors are small companies and lack the capacity to meet Executive Order No. 22 requirements.

The HRD internal policy is to conduct an audit of every construction project lasting over three months at least once every quarter. The HRD audit process includes:

- Comparing the general contractor and subcontractors payroll data originally reported with the certified payroll for a selected month and noting any discrepancies.
- Verifying employees reported as Detroit residents with documented proof such as a copy of the employee's drivers license, Michigan Identification Card, and affidavit of residency. The HRD staff may attempt to meet with selected contractor employees but this may not always be possible.
- Verifying by reviewing supporting documentation that non-compliant general contractors and subcontractors have made good faith efforts such as

contacting unions to request Detroit residents, minorities and women for work on their project.

- Conducting an inspection of the site and observing the contractor's and subcontractors' workers.
- Analyzing the results of the audit and updating the HRD project file and notifying the general contractor of the results of the audit.
- Contractor's clearance can be changed based on the findings of the audit.

Good Executive Order No. 22 bona fide auditing procedures require that reliable and corroborating evidence be obtained to determine the validity and accuracy of the data reported by the contractors. The auditors can use the data gathered by the auditee as part of their evidence. However, the auditors must determine the validity and reliability of this data by direct tests of the data. The nature and extent of testing of the data will depend on the significance of the data to support the auditor's findings. Reliability is the quality of information that assures that information is reasonably free from error and bias and faithfully represents what it purports to represent. Synonyms for reliability are dependability and trustworthiness. Evidence arising from inquiries of the client or from inspecting documents provided by the client is usually considered less reliable from the auditor's viewpoint. Corroborating evidence is information that supports the underlying evidence and is considered more reliable. In the case of payroll registers corroborating evidence would be time cards, personnel, and tax records. For subcontractors' reports corroborating evidence would be invoices from the subcontractors to the general/prime contractor.

Some expanded audit procedures for payroll reports include the following:

- Identify the basic time records (i.e., sign-in sheets, timecards etc.) maintained by the auditee.
- Evaluate the overall adequacy of the basic time records in providing adequate control and documentation of paid time of employees.
- Select a sample of employees, appearing on the payroll register for the selected payroll period.
- Determine that the basic time records (e.g., time cards) are approved by supervisors.
- Determine that the number of hours to be paid for both time worked and time off as reflected on the basic time records agrees with the actual hours paid per the payroll register. Trace all hours paid per the payroll register to hours worked per the supporting time records noting any differences.
- Trace employees per the payroll records to personnel files and to quarterly tax reports such as the State Wage Detail Report for unemployment. Trace employees to W-4 withholding certificates.
- Determine whether the employee signs the time cards.
- Trace a sample of employees paid from the payroll register to cancelled checks.
- Determine that employees on the payroll exist. Select a sample of employees from the payroll register. Perform an attendance check by observing employee drivers license, social security number and obtain a

signature directly and in person from each employee selected. Trace signatures and social security numbers to the payroll register, and time cards.

There needs to be a division of monitoring and auditing responsibilities. The staff responsible for monitoring should not conduct audits. Combining auditing and monitoring responsibilities can be counterproductive. There can be a conflict of interest when the monitor audits those that they provide technical assistance to and work with on a daily basis. In addition, there can be a breakdown in trust and cooperation between the monitor and the general contractor when audit results are not favorable to the contractor.

Recommendation

We recommend that the HRD add a bona fide audit component to the Executive Order No. 22 oversight process. The Executive Order No. 22 auditing and monitoring responsibilities must be segregated. The HRD staff should not have both responsibilities. The HRD should work with the Office of the Auditor General to develop audit programs.

6. HRD Reporting Weaknesses

The HRD needs to improve its internal and external reporting process to provide management with relevant information to assess performance and improve the administration of Executive Order No. 22. The HRD has the data to create useful reports that would help in promoting affirmative action in the City's procurements and provide valuable information to the City's political leaders (i.e., Mayor and City Council) and the HRD management.

A good system of internal control includes a system of measuring, reporting and analyzing information to provide effective controls over departmental performance. Measurement is the first step to understanding problems and opportunities. Corrective actions and continuous improvements follow; and progress is monitored from a measured baseline. A management information system provides a tool for management to plan more effectively and to communicate concerns and potential problems.

The HRD management provided us with a report of projects that showed compliance with Executive Order No. 22 numerical requirements. The report has data on each construction project and included contract amount, prime contractor, City Department, total hours worked, hours worked by Detroit residents, hours worked by minorities, and hours worked by women. The HRD also has this data for subcontractors but does not report on individual subcontractors.

The report contained several errors (e.g., some project hours reported were different from the hours documented in the files) and omissions (e.g., some projects monitored by the HRD were not listed in the report). Also, the HRD relies on the General/Prime contractor to accurately report the information that makes up the initial report. We noted several projects where the hours reported appeared low in comparison to the dollar amount of the project suggesting that the General/Prime contractor was not reporting all the hours actually worked. In addition, we noted one subcontractor reporting workers with Eastern European names as minorities. The HRD accepts the reported data until it can prove through an audit or other means that the data is in error.

The HRD higher management expressed to us a desire for improved reporting on Executive Order No. 22 activities.

The report is excellent, when accurate, in showing the projects/contractors performance in meeting Executive Order No. 22 numerical requirements. The HRD should produce this report monthly, quarterly, and annually and share it with the Mayor and City Council. A trend analysis should be done comparing the current year to past years to determine whether compliance is improving. We were told that the HRD does not have any comparable reports on compliance for past years because the report is a result of the new monitoring procedures. As a result, we could not assess whether the HRD's new enforcement approach was working. With the absence of periodic reports, we could not tell whether the contractor's/subcontractor's "good faith efforts" were resulting in increased employment of Detroit residents, minorities, and women. However, if these reports are maintained accurately and consistently, they will provide management in the future with useful information.

An Organizational Assessment Project Final Report on the Human Rights Department, dated February 2000, provided by D. J. Miller & Associates, Inc (DJMA) recommended

that the "Department should adopt a philosophy of monitoring outputs or outcomes". It further recommended that the "Department needs to establish benchmarks for the services that it provides. The benchmarks define goals against which the Department can measure its ongoing performance. From the best practices research, DJMA found that performance measures of some kind are used to ascertain the effectiveness of programs, service delivery, or individual employee performance."

The DJMA report also stated "Performance measures are also a management tool that can be used to refine policies, set direction, and make other necessary organizational changes. The collection of measurement data becomes a powerful tool management can use to support and justify various programmatic initiatives."

The DJMA report further recommended that the HRD institute program tracking processes and create or modify current databases to generate reports that track performance for each of the program areas within the HRD. From the best practices research, DJMA found that these agencies with business development, contract compliance, or business certification programs performed program tracking and published program tracking reports.

DJMA also stated "CCD is responsible for monitoring compliance with Executive Order No. 22. However, there are no known administrative directives received by DJMA that set forth the actual guidelines for implementation of the program, in particular the reporting activities under Executive Order No. 22. Currently, CCD maintains informal spreadsheets that list projects subject to Executive Order No. 22, along with the respective percentages of Detroit residents, minorities and women employed on the projects. The need here is to familiarize the data collection process, and develop formal reports that summarize the performance of Executive Order No. 22. Since this data partly resides in City Departments that procure construction services, HR [HRD] must develop a system of mutual information exchange with these departments, in a manner similar to that with purchasing. The quality of information still depends upon the level of cooperation shown by prime contractors and subcontractors, and by unions in the construction trades."

The HRD Contract Compliance Division could provide additional information in monthly or quarterly reports to the HRD that would be useful to management decision making. Some of the information that could be reported is listed below.

- Number of projects monitored
- Number of projects requesting Executive Order No. 22 clearance
- Number of projects receiving clearances
- Number of Interim Conditional Clearances issued timely
- Number and names of projects not submitting the required reports
- Number of each type (i.e., clearance, conditional, and non-compliance) of clearance granted
- Number and names of projects not in compliance
- Number and types of sanctions (e.g., withholding of payment) taken against non-compliant projects
- Number of site visits made

- Number of audits completed
- Number of contractors fully complying with Executive Order No. 22 numerical requirements
- Number of contractors not meeting any of the Executive Order No. 22 numerical requirements
- Number of projects open
- Number of projects closed
- Number of construction hours by subcontractor for total hours, Detroit resident, minority, and women
- Number of construction hours by trade for total hours, Detroit resident, minority, and women
- Executive Order No. 22 performance by Prime/General contractor
- Executive Order No. 22 performance by subcontractor
- Executive Order No. 22 performance by trade
- Executive Order No. 22 performance by City Department

Recommendation

We recommend that the HRD implement a formal reporting/management information system and maintain the data that was noted in this finding. We also recommend that the HRD analyze this data for decision making purposes and accountability in order to improve the Contract Compliance Division administration of Executive Order No. 22.

7. Noteworthy Accomplishments by HRD

Professionalism

The HRD staff receives training on a regular basis and the Department was encouraging staff to become more involved in professional organizations and obtain certifications (Certified Compliance Officer). The HRD was involved in the City's Performance Planning and Development Process, completing a commendable 100% of the baseline meetings required.

Outreach Efforts

The HRD outreach efforts are excellent. The HRD has partnered with construction industry organizations such as the Plumbing and Heating Industry (PHI) of Detroit Inc., to encourage improved employment in construction trades through apprenticeship and training programs for Detroit residents, minorities and women. In addition, the HRD has begun several initiatives to develop relationships with some skilled trade unions and have worked with others to create apprenticeship programs for mentoring women and Detroit residents seeking to enter a trade. The interaction necessary to develop these relationships effectively requires staff time and innovative incentives to encourage the cooperation of the unions and contractors. The HRD has been involved in scheduling and participating in conferences, roundtables, forums, career expos etc., to encourage greater participation by Detroit residents, minorities and women in the construction skilled trades. The HRD is implementing the consultant recommendations for "programmatic initiatives for the Executive Order No. 22 program to include heightening awareness and secure buy-in among contractors and unions". The consultant noted that "the outreach function is seen by the HRD management as especially critical because of the Department's need to revamp its public image among the important external stakeholder groups and to increase the pool of businesses eligible to participate in the DSBP program." The HRD Director stated that the Department's goal is to demonstrate that public/private sector collaboration can be mutually rewarding and can ultimately serve as a catalyst to stimulate widespread diversity throughout the construction industry.

Streamlined Procedures

The HRD Executive Order No. 22 procedures and clearance process were streamlined to make the process more efficient and to encourage greater compliance with the Executive Order No. 22 requirements. We noted that the HRD issues the Interim Conditional Clearances in a timely manner when City Departments submit the Request for Executive Order No. 22 clearance, which expedites the contracting process. In July 1999, the City officially implemented the new monitoring guidelines for all projects subject to the Construction Workforce Diversity Program - Executive Order # 22. The re-engineered guidelines include:

- Establishing partnerships with residents, business leaders, unions, faith based and nonprofit organizations.
- A significant reduction in the amount of paperwork required.
- The implementation of an information network that promotes skilled trades to the community as a viable and lucrative career.

The new guidelines enhance efficiency through improvements that include:

- Increased accountability at the general contractor level

- Periodic site visits
- Streamlined reporting requirements
- Hands on responsibility at the general contractor level
- Reduced determination categories
- Enhanced good faith efforts
- HRD staff empowerment

Award

The HRD received the 5th annual Gender and Race Diversification Excellence (G.A.R.D.E.) award for its innovative re-engineering process and its administration of the monitoring guidelines for the Construction Workforce Diversity Program, more commonly known as Executive Order # 22, from the GLCA (Great Lakes Construction Alliance) for 2000. The HRD provides technical support to the contractors it monitors to assist them in meeting the Executive Order No. 22 requirements.

INTER-DEPARTMENT
City of Detroit
EXECUTIVE OFFICE

Attachment A

DELMAN A. YOUNG
Mayor

August 29, 1983

EXECUTIVE ORDER NO. 22

TO: THE HONORABLE CITY COUNCIL
HEADS OF DEPARTMENTS
BOARDS AND COMMISSIONS

SUBJECT: EMPLOYMENT OF LOCAL LABOR ON PUBLICLY FUNDED
CONSTRUCTION PROJECTS

No city has suffered more economic devastation as a result of the national recession than Detroit. Our unemployment rate remains one of the highest in the nation, producing an unacceptable level of deprivation, hunger, malnutrition and infant morbidity and mortality.

Nothing is more important to the economic revitalization of Detroit than providing jobs to the residents of Detroit. There is very little wrong with this city that would not be cured by a job for every man and woman who wants to work.

At a time when unemployment has had such a devastating effect on our city, it is imperative that we do all that we can to alleviate the joblessness we find in Detroit.

There is a particularly high rate of unemployment and underemployment for Detroit residents who work in the construction industry and subcontracted trades.

Publicly funded construction projects in the city are substantially supported by money derived from Federal, State and City taxes. It is important that we assure that those funds which are returned to Detroit are used to provide the maximum benefit for Detroit.

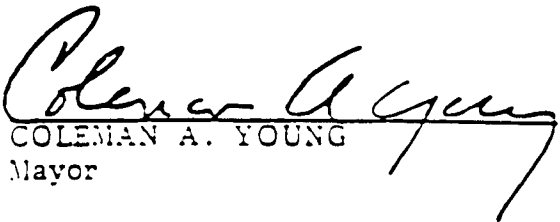
More specifically, construction projects in Detroit or for the City's benefit should, so far as is possible, provide jobs for the residents of this City. Detroit residents have a right to expect an opportunity to hold jobs generated by publicly funded construction projects involving the City.

Executive Order No. 22
August 29, 1983
Page Two

Therefore, I do hereby order that the following policy take effect as of November 1, 1983:

On any construction project funded in whole or in part by the City, or State or Federal funds, the worker hours shall be performed by not less than 50% bona fide Detroit residents, not less than 25% minorities and at least 5% women. Where possible, these percentages shall be applied on a craft-by-craft basis. For purposes of this paragraph, worker hours shall include work performed by persons filling apprenticeship and on-the-job training positions.

I am also directing the Finance Director to prepare for my final review and approval appropriate administrative guidelines to implement this Order while assuring minimum delay in the completion of City publicly funded construction projects. The Finance Department and other City Departments which I may from time to time designate shall be responsible for monitoring and enforcing the provisions of this Executive Order.


COLEMAN A. YOUNG
Mayor

**City of Detroit Human Rights
Department**

Responses To

Auditor General Findings

March 4, 2002

March 4, 2002

Human Right's Responses to AG Findings

FINDING 1

HRD LACKS FORMAL DIRECTIVE ON EO22 ADMINISTRATIVE GUIDELINES

Auditor Generals Recommendation

We recommend that the HRD work with the Finance Department to formally replace Finance Directive 101 with a new Directive to all city Departments, Boards and Commissions for Executive Order No. 22, that includes the new administrative guidelines and the relevant requirements of the old guidelines that were omitted.

Department's Response

In July of 1998, the HRD began the process of re-engineering Executive Order No. 22, monitoring guidelines. This change was needed in part because the city required mounds of paper work submissions by contractors and the department spent a great deal of time requesting records from contractors even though construction in many cases had been completed years before. Moreover, this resulted in frustration for both staff and contractors with no benefits accruing to Detroit residents, minorities and women. Finally, the department interacted with every sub-contractor on a project which made the process cumbersome and impossible to administer on a timely basis.

Improved Executive Order No. 22 monitoring guidelines were implemented in July of 1999 and distributed to contractors and city departments. Without compromising the integrity of the process the new guidelines reduced the amount of paper work required for Executive Order No. 22. Also, a policy was established to hold the Prime/General Contractor accountable for assuring that all sub-contractors adhere to Executive Order No. 22. Furthermore, HRD incorporated periodic site visits; enhanced good faith efforts and streamline excessive paperwork .

For the purposes of clarity as discussed in the AG report, HRD will re-distribute the improved monitoring guidelines and issue a new Directive addressing user department responsibilities for Executive Order No. 22. HRD will also work with the Finance Department to formally replace Finance Directive 101.

FINDING 2

FEW CONTRACTS/PROJECTS ARE FULLY COMPLYING WITH EO22 NUMERICAL REQUIREMENTS

Auditor Generals Recommendation

We recommend that the HRD continue to vigorously work with contractors to gain compliance with the provisions of Executive Order No.22; and continue outreach efforts to commit contractors and unions to hiring more Detroit residents, minorities and women.

Department's Response

Due to increased levels of construction in Southeastern Michigan, skilled labor demand has been at an all time high during the past four years. Many contractors and developers have been somewhat challenged in meeting the hiring goals for Detroit residents and sometimes women construction workers hours. HRD's policy is to require contractors to consistently demonstrate that they have requested Detroit residents and women for the projects. However, contractors' records frequently include responses from unions that Detroit residents and women were not available. **It should be noted that many contractors and developers exceed the minority hiring goals.**

The shortage of targeted workers in construction skilled trades has lead the department to focus more on addressing recruiting deficiencies for Detroit residents, minorities and women in apprenticeship programs. For example, a collaboration between the City and the Plumbing and Mechanical contractors (PMC) is aimed at specifically increasing the number of Detroit residents, minorities and women who are admitted to the plumber's and pipe-fitter's training program. HRD will continue to work with contractors, developers, unions and the various apprentice programs to increase participation of Detroit residents, minorities and women in the skilled trades

FINDING 3

HRD NOT MONITORING ALL CITY CONSTRUCTION CONTRACTS

Auditor Generals Recommendation

We recommend that the HRD be given Executive Order No. 22 approval in the City's DRMS system for construction contracts. No construction contract should be awarded by the city without

the HRD approval (Interim Conditional Clearance for Executive Order No. 22 issued by HRD). Note we found that HRD was timely in issuing the Interim Conditional Clearances.

In addition, we recommend that HRD's Contract compliance Division work more closely with contracting City Departments and the Finance Department's Purchasing division to ensure affirmative action is accomplished in the award of city contracts, especially construction contracts.

Department's Response

The Human Rights Department agrees with the AG's recommendation with regard to the benefits gained by having E.O. 22 clearance approval in the City's DRMS system. Additionally, the new Directive as mentioned previously will provide instructions to city departments on their responsibilities for Executive Order No. 22 as it relates to the award of City contracts.

FINDING 4

WEAKNESS IN HRD MONITORING OF EO22 REQUIREMENTS

Auditor Generals Recommendation

We recommend that the HRD follow-up more timely on non-compliant contractors. It appeared that the HRD phone calls and follow-up produced results.

Department's Response

During 2000, the HRD had one hundred and eighty one (181) EO 22 projects and four assigned analysts. Many of the issues surrounding timeliness were related to the availability of staff resources. It should be noted each analyst on an average manages 45 projects. Analysts must review and follow-up on monthly reports and correspondence for each project. They are constantly engaged in completing files on hand and placing others on hold. Hence, some tasks are addressed later rather than sooner. Included among these 181 projects are the following large scale developments which further impact the department's ability to consistently follow up on a monthly basis:

- Three Casino Developments
- Comerica Park
- Ford Field
- Campus Martius
- Compuware

These projects require quarterly reviews for not only Executive Order No. 22, but also for target business participation (Detroit Based, Small, Minority and Women). In the case of the three casino developments, HRD must review casino operations' resident hiring goals. Finally, HRD has the responsibility for preparing and issuing an annual Casino Review and Findings report.

In addition to EO22 responsibilities, many of the same staff persons work on other department programs:

- Detroit Based, Small, Minority and Women Owned Business Certifications,
- Review of Tax Abatements for Planning and Development,
- Human Rights Clearances for all city agencies entering into contracts,
- Community Outreach Efforts and
- Human Rights Complaint Investigations.

FINDING 5 LACK OF BONA FIDE EO22 AUDIT PROCESS

Auditor Generals Recommendation

We recommend that the HRD add a bona fide audit component to the Executive Order No. 22 oversight process. The Executive Order No. 22 auditing and monitoring responsibilities must be segregated. The HRD should work with the Office of the Auditor General to develop audit programs.

Department's Response

HRD uses contractor certified payrolls and proof of residency documents when reviewing construction worker hours on a project. These certified payroll are the same documents that the Federal government uses in determining contractor compliance for prevailing wage purposes on federally funded projects. Such factors as current level of staff resources, time constraints, and the number of construction projects preclude the department from implementing a separate audit component at this time.

FINDING 6

HRD REPORTING WEAKNESSES

Auditor Generals Recommendation

We recommend that the HRD implement a formal reporting/management information system and maintain the data that was noted in the finding. We also recommend that the HRD analyze this data for decision making purposes and accountability in order to improve the Contract Compliance Division administration of Executive Order No. 22.

Departments Response

Prior to the Auditor Generals Performance Audit, HRD recognized the need for improved reporting. We recently completed an information technology needs assessment. One recommendation was to upgrade our current computer system to improve data capturing and reporting; thus allowing HRD to generate formal reports as identified in the AG Findings.

Presently, the department captures information in Excel spreadsheets. Excel and Access database applications both have operating limitations that reduce responsiveness; i.e. irregularities due to file size, system freezing, slowness and system inflexibility. Furthermore, our current technology creates the following reporting challenges:

- The analysts' workstations are all standalones
- Each of the analyst separately monitors and tracks the performance of individual projects
- Data and information are e-mailed and reports are compiled on a cut and paste basis

Information and data transferred in this matter is unstable, prone to errors and is not readily retrievable for sharing and updating. Thus, we will to continue exploring computer system enhancements that provide better accuracy, data capturing, and reporting.